



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re: CHAPTER 11
FRED FULLER OIL & PROPANE CO., INC., Case No. 14-12188-JMD
Debtor

**DEBTOR'S DISCLOSURE STATEMENT
DATED NOVEMBER 13, 2015
PERTAINING TO PLAN OF REORGANIZATION ¹**

Pursuant to Section 1125 of the Code of 1978, *as amended*, 11 U.S.C. §101 *et seq.*, the debtor and debtor in possession, **Fred Fuller Oil & Propane Co., Inc.**, respectfully submits this Disclosure Statement pertaining to the Debtor's Plan of Reorganization of even date to the United States Bankruptcy Court for the District of New Hampshire, creditors and all other parties in interest that have filed an appearance in this Case pursuant to Section 1127 of the Code. The Court approved this Disclosure Statement on _____ and authorized the Debtor to solicit acceptances of the Plan using this Disclosure Statement. Except as otherwise disclosed herein, this Disclosure Statement is based on the information available to the Debtor on the last day of the second calendar month preceding the date hereof.

All capitalized words, terms and phrases shall have and be given the meaning attributed to them in the Glossary attached to the Plan when used in the Plan or this Disclosure Statement. Except as otherwise defined herein, all words, terms and phrases defined in the Code and terms of art used in Chapter 11 reorganization cases shall have and be given the same meaning when used herein.

Respectfully submitted,

Dated: ~~December 21, 2015~~~~December 20, 2015~~~~December 19, 2015~~ /s/ William S. Gannon

William S. Gannon, BNH 01222
Counsel to:

¹ This Disclosure Statement, which is a result of the Status Conference held on September 25, 2015, supersedes the Disclosure Statements dated July 16, 2015 [Doc. 299] and September 18, 2015 [Doc. 352].

FRED FULLER OIL & PROPANE CO., INC.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing pleading on each person named below by causing it to be filed electronically via the CM/ECF filing system:

Assistant United States Trustee that appeared or appears on behalf of the Office of the United States Trustee in this Case (electronically via CM/ECF):

Geraldine Karonis – electronically via CM/ECF

Counsel to the Committee (electronically via CM/ECF):

Daren R. Brinkman – electronically via CM/ECF
Leonard G. Deming, II – electronically via CM/ECF

Special Procedures Staff of the Insolvency Unit of the Internal Revenue Service (to attorney - electronically via CM/ECF):

Michael T. McCormack – electronically via CM/ECF

New Hampshire Department of Justice (electronically via CM/ECF) and New Hampshire Department of Revenue Administration (to attorney - electronically via CM/ECF):

Peter C.L. Roth – electronically via CM/ECF

All persons and entities named on the CM/ECF Electronic Service List, including but not limited to the following:

Holly Barcroft – electronically via CM/ECF
Christopher M. Candon – electronically via CM/ECF
Eleanor Wm Dahar – electronically via CM/ECF
Steven J. Dutton – electronically via CM/ECF
Lawrence M. Edelman – electronically via CM/ECF
Jeremy R. Fischer – electronically via CM/ECF
Edmond J. Ford – electronically via CM/ECF
Jay L. Hodes – electronically via CM/ECF
Leslie H. Johnson – electronically via CM/ECF
James S. LaMontagne – electronically via CM/ECF

Benjamin E. Marcus – electronically via CM/ECF
Richard K. McPartlin – electronically via CM/ECF
Diana Delaney O'Hara – electronically via CM/ECF
Office of the U.S. Trustee – electronically via CM/ECF
Edward D. Philpot, Jr. – electronically via CM/ECF
Charles R. Powell, III – electronically via CM/ECF
Daniel W. Sklar – electronically via CM/ECF
Frank P. Spinella, Jr. – electronically via CM/ECF

DATED: ~~December 21, 2015~~~~December 20, 2015~~~~December 19, 2015~~ /s/ Beth E. Venuti
Beth E. Venuti

Part One

Executive Summary

A. Liquidating Pot Plan. From the remaining proceeds of the Rymes Sale, the Subsequent Rymes Transactions and the reduction of the pending Proceedings and retained Causes of Action and any other property of the estate to money, the Debtor, acting by and through the Plan Administrator, Jeffrey T. Varsalone, in consultation with an Oversight Committee will pay the dividends due creditors holding allowed claims through what is sometimes called a “Pot Plan.” The Plan Administrator will pay allowed claims on a Class by Class in a series of distributions from the Available Funds from time to time strictly in accordance with the following order of preference and priority or “waterfall:” (1) first, Classes 1 and 2, the Non-professional and Professional Administrative Expense Classes, which are pari passu with respect to each other, (2) second, Class 3, the Priority Employee Benefit Class, (3) third, the Priority Consumer Deposit Class, (4) fourth, Class 5, the General Unsecured Claims Class, (5) fifth, the Subordinated Claims Class, and (6) sixth and last, the Equity Interest Class. No dividends will be paid to any Class until those due the senior Class have been paid in full. Within each Class, creditors holding allowed claims will be paid a pro rata or fractional part of the money available for distribution to the Class from time to time, the numerator of which will be the amount of an allowed claim and the denominator of which will be the total amount of allowed claims in the Class.

B. Executive Summary Table. In the following table, the Debtor provides Plan Parties with key information regarding the Classes to be created by the confirmation of the Plan, including an estimate or projection of the dividends or range of dividends projected to be paid on account of allowed claims in each Class based on the best information available to the Debtor on the Disclosure Date. The “Total Projected Dividends” for each Class assumes, among other things that claims in all Classes will be allowed in the “Estimated Allowed Amount.” Although the Debtor cannot and does not guarantee that creditors holding allowed claims will be paid the Total Projected Dividends” for the Class, the Debtor believes that the estimate is reasonable based on the best information available to the Debtor on the Disclosure Date.

Executive Summary Table

Class Number, Title and Other Information	Estimated Maximum and Allowed Amounts, Dividend Formula and Projected Dividend
<p>Class 1: Non-professional Administrative Expense Claims Class</p> <p>Seniority: First, pari passu with Class 2</p> <p>Non-payment Risk: None foreseen at this time</p> <p>Dilution Risk: None foreseen at this time</p> <p>Impaired: No</p> <p>Voting Rights: None</p> <p>Known Disputed Claims: See Exhibit A</p>	<p>Estimated Maximum Amount: \$137,000.</p> <p>Estimated Allowed Amount: Undetermined</p> <p>Payment Formula or Method: From Available Funds for this Class from time to time, allowed claims in this Class will be paid to the extent possible beginning on or about the 15th day following the later of (i) the Effective Date or (ii) the last date on which a claim in this Class shall be allowed in whole or in part and/or (iii) such later date or dates as there shall be funds available to pay dividends to creditors holding allowed claims in this Class.</p> <p>Projected Dividend Payments: In full, without interest – 100 cents on the dollar.</p>

Class Number, Title and Other Information	Estimated Maximum and Allowed Amounts, Dividend Formula and Projected Dividend
<p>Class 2: Professional Administrative Expense Claims Class</p> <p>Plan Priority or Seniority: First, pari passu with Class 1</p> <p>Non-payment Risk: None foreseen at this time</p> <p>Dilution Risk: None foreseen at this time</p> <p>Impaired: No</p> <p>Voting Rights: None</p> <p>Known Disputed Claims: See Exhibit A.</p>	<p>Estimated Maximum Amount: \$175,000 in accrued fees plus \$25,000 for other professionals, which will be included in Post-confirmation Reserve Budget although the amount could change dramatically depending on whether retained Proceedings and Causes of Action settle early or require extensive discovery and trial.</p> <p>Estimated Allowed Amount: Same as Estimated Maximum Amount</p> <p>Payment Formula or Method: From Available Funds for this Class from time to time, allowed claims in this Class will be paid to the extent possible beginning on or about the 15th day following the later of (i) the Effective Date or (ii) the last date on which a claim in this Class shall be allowed in whole or in part and/or (iii) such later date or dates as there shall be funds available to pay dividends to creditors holding allowed claims in this Class.</p> <p>Projected Dividend Payments: In full, without interest – 100 cents on the dollar – subject to Court approval.</p>

Class Number, Title and Other Information	Estimated Maximum and Allowed Amounts, Dividend Formula and Projected Dividend
<p>Class 3: Priority Employee Benefit Claims Class</p> <p>Non-payment Risk: None foreseen at this time</p> <p>Dilution Risk: None foreseen at this time</p> <p>Plan Priority or Seniority: Third</p> <p>Impaired: No</p> <p>Voting Rights: None</p> <p>Known Disputed Claims: See Exhibit A.</p>	<p>Estimated Maximum Amount: \$24,000.</p> <p>Estimated Allowed Amount: \$24,000, which represents the estimated balance of the allowed claims in this Class after Rymes has paid the \$278,000 due Harvard Pilgrim under the Asset Purchase Agreement as long as the Court determines that it qualifies as a priority claim.</p> <p>Payment Formula or Method: From Available Funds for this Class from time to time, allowed claims in this Class will be paid to the extent possible beginning on or about the 15th day following the later of (i) the Effective Date or (ii) the last date on which a claim in this Class shall be allowed in whole or in part and/or (iii) such later date or dates as there shall be funds available to pay dividends to creditors holding allowed claims in this Class.</p> <p>Projected Dividend Payments: In full, without interest – 100 cents on the dollar – as long as allowed claims in senior classes do not exceed Estimated Allowed Amounts given herein and Rymes pays the \$278,000 due Harvard Pilgrim.</p>

Class Number, Title and Other Information	Estimated Maximum and Allowed Amounts, Dividend Formula and Projected Dividend
<p>Class 4: Priority Consumer Deposit Claims Class</p> <p>Plan Priority or Seniority: Fourth up to \$2,775 per allowed claim in Class</p> <p>Non-payment Risk: Possible</p> <p>Dilution Risk: Possible if allowed claims in senior Classes exceed Estimated Allowed Amounts</p> <p>Impaired: Yes</p> <p>Voting Rights: Yes</p> <p>Known Disputed Claims: See Exhibit A.</p>	<p>Estimated Maximum Amount: \$459,000</p> <p>Estimated Allowed Amount: \$174,000.</p> <p>Payment Formula or Method: From Available Funds for this Class from time to time, allowed claims in this Class will be paid to the extent possible beginning on or about the 15th day following the later of (i) the Effective Date or (ii) the last date on which a claim in this Class shall be allowed in whole or in part and/or (iii) such later date or dates as there shall be funds available to pay dividends to creditors holding allowed claims in this Class.</p> <p>Projected Dividend Payments: Allowed claims in this Class should be paid in full although there is a risk of dilution if there should be more allowed claims in a senior class than estimated by the Debtor.</p>

Class Number, Title and Other Information	Estimated Maximum and Allowed Amounts, Dividend Formula and Projected Dividend
<p>Class 5: General Unsecured Creditor Claims Class</p> <p>Plan Priority or Seniority: Fifth</p> <p>Non-payment Risk: Substantial</p> <p>Impaired: Yes</p> <p>Right to Vote: Yes</p> <p>Known Disputed Claims: See Exhibit A.</p>	<p>Estimated Maximum Amount: \$7,025,000, <u>exclusive of the \$2,910,000 in claims asserted by Sharen J. Fuller which have been placed in the Subordinated Insider Claims Class because they will be equitable subordinated or re-characterized as equity in the Debtor's opinion. If included in this Class, the total of claims would increase to \$9,935,000 diluting any dividend by 30% to 41%.</u></p> <p>Estimated Allowed Amount: Undetermined</p> <p>Payment Formula or Method: From Available Funds for this Class from time to time, allowed claims in this Class will be paid to the extent possible beginning on or about the 15th day following the later of (i) the Effective Date or (ii) the last date on which a claim in this Class shall be allowed in whole or in part and/or (iii) such later date or dates as there shall be funds available to pay dividends to creditors holding allowed claims in this Class.</p> <p>Projected Dividend Payments: The Debtor considers it unlikely that creditors holding allowed claims will be paid a meaningful dividend absent significant recoveries on account of retained Proceedings and Causes of Action. <u>In Appendix Exhibit C, the Debtor projects a "High" potential dividend of 17% based on the disclosed assumption that the Debtor will recover \$9,235,000 through Chapter 5 Actions and breach of fiduciary and deepening insolvency claims although offsets, including those held by insiders like Sharen Fuller, may reduce significantly the amount of cash recovered by the Debtor.</u></p>

Class Number, Title and Other Information	Estimated Maximum and Allowed Amounts, Dividend Formula and Projected Dividend
<p>Class 6: Subordinated Insider Claims Class</p> <p>Plan Priority or Seniority: Fifth</p> <p>Non-payment Risk: Extremely substantial</p> <p>Impaired: Yes</p> <p>Right to Vote: Yes, but only to reject.</p> <p>Known Disputed Claims: See Exhibit A.</p>	<p>Estimated Maximum Amount: \$8,669,000, including the \$2,910,000 unsecured claims asserted by Sharen Fuller who will dispute the subordination of her claims.</p> <p>Estimated Allowed Amount: Undetermined</p> <p>Payment Formula or Method: From Available Funds for this Class from time to time, allowed claims in this Class will be paid to the extent possible beginning on or about the 15th day following the later of (i) the Effective Date or (ii) the last date on which a claim in this Class shall be allowed in whole or in part and/or (iii) such later date or dates as there shall be funds available to pay dividends to creditors holding allowed claims in this Class.</p> <p>Projected Dividend Payments: Undetermined. The Debtor considers it extremely unlikely that creditors holding allowed claims will be paid a significant dividend absent significant recoveries on account of retained Proceedings and Causes of Action.</p>
<p>Class No. 7: Equity Interest Class</p> <p>Impaired: Yes</p> <p>Right to Vote: Yes, may vote to reject only</p> <p>Known Disputed Claims: No. See Exhibit A.</p>	<p>Estimated Maximum Amount: N/A</p> <p>Estimated Allowed Amount: N/A</p> <p>Payment Formula or Method: N/A</p> <p>Total Projected Dividends: None</p> <p><u>Under no circumstances will Fred Fuller receive any dividend under the Plan on account of the equity interests before they are canceled or replaced by new equity interests.</u></p>

C. Disclosure Statement Summary and Purpose.

This Disclosure Statement is divided into Parts. This Part provides Plan Parties with an overview or executive summary of the Plan and this Disclosure Statement. Parts Two and Three

summarize the most important articles, sections and paragraphs of the Plan itself in the sequence in which they appear in the Plan using the same article and section titles² as those used in the Plan for easy reference and comparison. In the remaining Parts of this Disclosure Statement, which have no Plan counterpart, the Debtor provides information considered necessary to evaluate the merits of the Plan.

The purpose of this Disclosure Statement is to provide Plan Parties with information adequate for them to make an informed judgment regarding the merits and benefits of the Plan, but is not an exhaustive discussion of the Plan. This Disclosure Statement provides Plan Parties with a summary in lay terms the most important provisions of the Plan and the means for implementing the Plan and provides the other information mandated by the Code and generally required by Courts as a condition to the approval of a disclosure statement. Since the Plan confirmed by the Court will establish and govern the parties' Plan obligations following confirmation, Plan Parties must read the Plan carefully.

Part Two

Plan Summary

I. Conditions Precedent, Confirmation and Effective Date.

On the Effective Date, the Plan will become a valid, binding and enforceable contract, which benefits and binds the Debtor and each Plan Party. In essence, the Plan creates a new relationship between the Debtor and the Plan Parties although it may be based in whole or in part on pre-petition documents in the case of secured creditors holding allowed claims.

The Glossary defines the terms "Confirmation Date" and "Effective Date." The Debtor expects the Plan to become effective on or about November 15, 2015. The Debtor will, however, continue its on-going efforts to reduce its Retained Proceedings and Retained Causes of Action to money for distribution to creditors holding allowed claims. On the Confirmation Date, Jeffrey T. Varsalone, the Debtor's independent Chief Restructuring Officer and Rule 9001(5) Designee or another person appointed by the Court will become the Plan Administrator. Under the Plan,

² The numbers and letters used in this Disclosure Statement will not correspond to the Plan because this Disclosure Statement does not discuss each provision of the Plan.

the Plan Administrator will be responsible for the implementation of the Plan for the benefit of creditors holding allowed claims.

II. Plan Classes; Impairment, Voting and Acceptance.

The confirmation of the Plan will create the Classes listed in the *Executive Summary Table*. The *Executive Summary Table* and this part of the Plan identify the impaired Classes, their eligibility to vote on the Plan in the Debtor's opinion, the standard for determining acceptance of the Plan and the right of the Debtor to ask the Court to Confirm or "cram down" the Plan over the objection of one or more Classes. A claim or equity interest will be impaired by Confirmation if the Plan changes in any way the "legal, equitable, and contractual rights to which the claim or interest entitles the holder" outside of the Case unless the treatment of the claim satisfies the complex provisions of Section 1124(2). Except for insiders (who may vote to reject the Plan, but not to accept it) and creditors holding claims for which the Code prescribes specific treatment, creditors holding impaired claims may vote to accept or reject the Plan.

Part Three

Summary of Class Dividends and Treatment

III. Priority Claims Classes.

A. Class 1: Non-professional Administrative Expense Class.

1. The Debtor incorporates the information given with respect to this Class in the *Executive Summary Table*. This Class includes (a) the United States Trustee and to the extent of its claim for quarterly fees, (b) creditors holding claims for goods received by the Debtor within twenty (20) days of the Petition Date in the ordinary course of business to the extent entitled to priority under Code Section 503(b)(9) and (c) creditors that provided goods or services to the Debtor after the Petition Date and are entitled to priority under Code Section 507(a)(2) to the extent of the value conferred on the Estate and, but excludes professionals described in the succeeding section. On the Effective Date, the Debtor shall pay in full in cash all quarterly fees then due the UST.

2. All other allowed expenses in this Class will be allowed in such amount as set forth by order of this Court upon approval of an application for allowance of an administrative claim, and paid in full on the later of the Effective Date or the date on which payment is due under State law. Except as otherwise provided for in the succeeding Paragraph 3 of this Section, all requests for non-professional fee administrative expense claims shall be upon application to the Bankruptcy Court and must be filed within sixty (60) days of the Effective Date. If creditor fails to seek Bankruptcy Court approval of a non-professional fee administrative expense claim within sixty (60) days of the Effective Date and has not previously filed a Proof of Claim asserting a 503(b)(9) claim for goods received by the Debtor in the ordinary course of business within 20 days of the Petition Date, the non-professional administrative expense claim shall be barred pursuant to the terms of the Plan.

3. If a creditor has filed a timely Proof of Claim asserting a 503(b)(9) claim, then the creditor need not file a motion or request for the allowance of such claim. The 503(b)(9) Proof of Claim preserves the claim for an administrative expense subject to the Debtor's right to object to or otherwise contest the allowance of the claim within 10 days following the Effective Date of the Plan for any reason, including without limitation, offsets, recoupments, avoidance claims or other claims or defenses held by the Debtor. A preserved 503(b)(9) claim will be deemed allowed if the Debtor does not file an objection or another pleading challenging the claim before the 10th day following the Effective Date. A preserved 503(b)(9) claim will be paid within 10 days of the date on which it is deemed allowed or the date on which the Court allows the claim in whole or in part. Although the Debtor need not file a report recommending the allowance of one or more 503(b)(9) Proofs of Claim in whole or in part, it may.

B. Class 2: Professional Administrative Expense Class.

The Debtor incorporates the information given with respect to this Class in the *Executive Summary Table*. This Class includes all claims held or asserted against the Debtor by the attorneys, accountants, consultants and other professionals retained by the Debtor and Official Committee of Unsecured Creditors pursuant to Code Section 327 with Court approval, including without limitation, the Debtor's Counsel, the Debtor's Chief Restructuring Officer and

Committee counsel. The Court has authorized the Debtor to pay the Chief Restructuring Officer and the Debtor's Counsel the sums of \$132,146.20 and \$120,435.98, respectively. The remaining unpaid claims in this Class are entitled to priority under Section 507(a)(2) if, and to the extent approved by the Court. No dividends will be paid to any professional until the Court enters an order granting a fee application filed by the professional in whole or in part. To the extent possible without diminishing cash reserves on the Effective Date, the allowed claims in this Class will be paid in full in cash no later than the 15th day following the later of the Effective Date or the allowance date of such claim as described in the *Executive Summary Table* and the part of the Plan captioned *Professional Administrative Class*.

C. Class 3: Priority Employee Benefit Claims Class.

The Debtor incorporates the information given with respect to this Class in the *Executive Summary Table*. This Class includes all claims relating to employee benefits asserted against the Debtor by creditors to the extent entitled to priority under Bankruptcy Code Sections 507(a)(4) and 507(a)(5), which are referred to as the Priority Employee Benefit Claims and Priority Employee Benefit Creditors. The Debtor will file a motion which asks the Court to authorize and direct Rymes to file an objection to the Harvard Pilgrim claim in this Class within 30 days from the date of the order granting the motion to protect the estate from an argument that the Debtor failed to make an effective objection or prosecute the objection effectively and save the Debtor and estate the cost of the contested matter. If the motion should be denied, the Debtor will file a pro forma objection to the Harvard Pilgrim claim in this Class as required by the Rymes APA based on Rymes' theories and tender the prosecution of the objection to Rymes to prevent an argument that it would have prevailed on the objection had its counsel formulated and prosecuted the objection. The Court will either allow the Harvard Pilgrim claim in which case Rymes will be obligated to pay \$278,000 of it or sustain the objection in which case Harvard Pilgrim will become an unsecured creditor. Further, this Class may include up to \$42,500 in employee severance and vacation claims for which Rymes is liable under the Asset Purchase Agreement in the Debtor's opinion. Notwithstanding the claims against Rymes, the Debtor may have to pay Harvard Pilgrim \$28,000 on account of post-petition claims outside of the Rymes indemnification obligation.

D. Class 4: Priority Consumer Deposit Class.

1. The Debtor incorporates the information given with respect to this Class in the *Executive Summary Table*. This Class includes all claims for asserted against the Debtor by creditors to the extent entitled to priority as consumer deposit claims under Bankruptcy Code Section 507(a)(7), which are referred to as the Priority Consumer Deposit Claims and Priority Consumer Deposit Creditors. which allows a seventh priority to:

allowed unsecured claims of individuals to the extent of \$2,775 claims for each such individual, arising from deposit, before the commencement case, of money in connection with the purchase . . . of property . . . for the personal, family, or household use of such individuals, that were not delivered or provided.

~~The Debtor will be liable to creditors holding allowed claims in this Class in the first instance. Payments made to creditors holding allowed claims in this Class will be made without prejudicing or adversely affecting in any way the Debtor's Causes of Action against Rymes described herein, notwithstanding the Causes of Action to be asserted against Rymes based on its breaches of, and defaults under the Rymes Asset Purchase Agreement, including the failure or refusal to pay all of the Assumed Liabilities, which include claims in this Class. Although the existence of Causes of Action against Rymes is not a defense to the Debtor's liability on account of claims in this Class, the amount recovered from Rymes may affect the amount paid on account of such claims. If the Debtor had no funds other than the money on deposit today, allowed claims in this Class would not be paid in full despite the priority afforded them by the Code, a fact which makes the full payment of allowed claims in this Class subject to the amount of recoveries made by the Debtor on account of Retained Proceedings and Causes of Action, including, most notably, the Rymes Causes of Action.~~

2. With respect to the payment of allowed claims in this Class, the Debtor will obligate itself to file objections to claims that fall or may fall into this Class on or before ~~##~~ March 1, 2016 subject to extension if there is a good reason for the extension of the objection ~~da~~ for good cause shown by the Debtor. The Debtor must give a creditor written notice of any objection to a claim in this Class or any other Class. A claim in this Class will be allowed in the absence of a timely objection subject to the priority limit of approximately

\$2,775. After the required notice and a hearing, the Court will determine the validity and amount of the claim as of the date of the Petition-subject to the priority limit of approximately \$2,775.

3. The Debtor expects the process of resolving claim objections to take 90 days beginning on the date by which the Debtor must file objections to Proofs of Claim in this Class. Although the Debtor may pay dividends or partial dividends on account of allowed claims in this Class after it has paid the allowed claims in all senior Classes or reserved sufficient funds to ensure payment in full, creditors holding allowed claims in this Class should not expect to be paid any dividends any earlier than the later of (a) the date on which all objections to claims in this Class have been resolved by a Court approved settlement or (b) Effective Date of the Plan of Reorganization. ~~Given the difficulties inherent in predicting with certainty the allowed amount of priority claims senior in priority to those in this Class and the need to raise additional money for the estate, the Debtor doubts that even partial dividends will be paid on account of allowed claims in this Class no earlier than the entry of the Confirmation Order, which the Debtor expects to occur during February 2016 and perhaps significantly later.~~

4. Each Proof of Claim filed by a creditor claiming to hold a claim in this Priority Consumer Deposit Class will be deemed allowed unless the Debtor or another party in interest objects successfully to the claim. Prior to the Bar Date, creditors filed approximately 450 Proofs of Claim asserting a priority consumer deposit claim or what may be a priority consumer deposit claim totaling approximately \$459,000.

5. Under the Plan, the Debtor retains the right to object to any Proof of Claim within the period of time set by the Court. The Debtor intends to interpret the consumer deposit priority liberally in deciding whether to object to a Proof of Claim in this Class. The Debtor may, however, object to Proofs of Claim in this Class in accordance with the Code and the Bankruptcy Rules. ~~on the grounds that they do not establish their right to a seventh priority on their face and/or the amount of the claim exceeds the statutory cap.~~ The most likely grounds for an objection ~~known to~~ foreseen by the Debtor at this time are the following:

a. The Proof of Claim is not supported by any document that supports the consumer priority deposit claim or the amount exceeds the priority cap.

~~a.b.~~ The creditor is not an individual – a natural person as opposed to a corporation, limited liability company, partnership or another business entity – because only individuals are entitled to a Priority Consumer Deposit Claim.

~~b.c.~~ A claim was satisfied in full by the Debtor before the closing of the Rymes Asset Sale or Rymes pursuant to the Rymes Asset Purchase Agreement. A partial satisfaction would reduce the amount of any claim in this Class on a dollar for dollar basis. Approximately 75 Proofs of Claim totaling about \$135,000 were filed by customers before the closing of the Rymes All-Asset Sale. According to Rymes, it satisfied all of those claims by delivering fuel to the creditors.

~~e.d.~~ The money at issue does not a “deposit . . . of money in connection with the purchase . . . of [fuel] that [was] not delivered or provided” by the Debtor. In some instances, a creditor claimed to be entitled to a claim equal to the amount of credit or credits remaining in the creditor’s account after the delivery of all of the oil required by a Pre-buy Contract or a Budget Plan Contract despite having the right to request a refund of the money after the end of the heating season. Although the Debtor will examine its own records and conduct in an effort to extend the consumer deposit priority as far as reasonably possible, the Debtor invites creditors asserting this type of claim to provide, and will ask for, and consider seriously communications, documents and facts showing that the creditor left the credits with the Debtor in connection with an agreement for the purchase and sale of fuel during the following heating season, such as a new Pre-buy Contract, a new Budget Plan Contract, a request for a delivery of fuel in reliance on the credit, a fuel invoice showing a delivery of fuel and the application of the credit to the invoice, a written communication documenting an expectation that fuel would be delivered during the next heating season and paid for with the credits.

~~d.e.~~ The creditor failed to make payments due the Debtor on account of the Pre-buy Contract or Budget Plan Contract and that the defaults constitute a material breach under state law that excused the Debtor from performing its obligations under the Contracts or reduces the amount due on account of the claim made in the Proof of Claim.

6. In deference to the legislative history which calls for a liberal or consumer-friendly interpretation of the priority and ensure even-handedness, the Debtor will

~~consult with the State and the Committee before objecting to a claim in this Class and permit the State or Committee to oppose any objection if there is a disagreement. Although the Debtor intends to, and will try to formulate a standard that satisfies both the State of New Hampshire and the Committee, the State has urged the Debtor to take a more liberal and expansive view of the priority, which is to be applied broadly.~~

7. Based on the information available at this time, the Debtor believes that its net liability to creditors holding allowed claims in this Class will be approximately \$183,000 for reasons given in earlier versions of this Disclosure Statement served on creditors and other parties in interest. Out of the \$459,000 in claims that fall or may fall into this Class, Rymes claims to have satisfied about \$135,000 of them through fuel deliveries. Rymes agreed to assume \$7,200,000 in claims held by customers named on lists provided to Rymes as part of the purchase and sale negotiations. Matching the names on the Proofs of Claim to the names on the customer lists suggests strongly that Rymes will have to pay the Debtor another \$277,000 on account of allowed claims in this Class, which will help fund the Debtor's obligations to those creditors. At the end of the day, the Debtor may have to pay without reimbursement from Rymes the "miscellaneous customer claims" or the claims described by the Debtor and Rymes as "old and cold," which total the Estimated Allowed Amount of \$174,000.

IV. Non-priority Unsecured Claims and Equity Interest Classes.

A. **Class 5: General Unsecured Claims Class.** The Debtor incorporates the information given with respect to this Class in the *Executive Summary Table*. This Class includes all non-priority unsecured claims against the Debtor, including without limitation, those held by the creditors named in the part of Exhibit A of the Plan captioned *General Unsecured Creditors*, except for those specifically placed in the *Subordinated Claims Class*. The Debtor incorporates the disclosures made with respect to this Class in the *Executive Summary Table* and Exhibit A with respect to this voting Class. The Debtor placed the \$2,910,000 in unsecured claims asserted by Sharen J. Fuller in the Subordinated Claims Class because the Debtor believes they are subject to equitable subordination or recharacterization as equity for a number of reasons, including the fact that no commercial lender would have provided the Debtor with working capital loans on an unsecured basis, and that Ms. Fuller participated in deepening the

insolvency of the Debtor. Ms. Fuller has advised the Debtor that she will oppose the subordination of her claims. If Ms. Fuller should be successful, the allowance of her claims in this Class will increase the high estimate of the allowed claims in this Class by approximately "30%" in Ms. Fuller's view and 41% in the Debtor's view. Claims in this class are subject to reconciliation by the Debtor and certain claims may be objected to by the Debtor prior to any distribution, specifically including but not limited to unliquidated litigation related claims.

B. Class 6: Subordinated Claims Class. The Debtor incorporates the information given with respect to this Class in the *Executive Summary Table*. This Class includes all claims against the Debtor held by insiders, including those related by blood or marriage and relatives by blood or relationship. The Debtor included the claims asserted by Sharen Fuller in this Class based on its belief that the claims are subject to equitable subordination or recharacterization as equity. No dividends will be paid to creditors holding allowed claims in this Class until the dividends due creditors in the senior classes have been paid in full.

C. Class 7: Equity Interest Class. This Class includes ~~only the Debtor's sole equity holder, Frederick Fuller, who holds all of the equity interests in the Debtor, and any persons or entities claiming by, through or under him.~~ Under the Plan, the equity interests held by Mr. Fuller will be canceled after the Plan has been fully consummated without the payment of any dividend to Mr. Fuller on account of the equity interests.

Part Four

Summary of Primary Means for Implementing Plan.

This part summarizes the means for implementing the Plan, which are set forth in the Articles XIII through XVII of the Plan. It explains the purpose of the acts, actions and transactions important to the successful implementation of the Plan. Like Part Three, this part uses the same article and section titles used in the Plan itself.

VII. Plan Administrator and Implementation of Plan.

To minimize the cost of administering the Plan and provide Plan Parties with a representative to monitor the implementation of the Plan, the Plan provides for the appointment of a Plan Administrator and Oversight Committee. The entry of the Confirmation Order will

appoint Jeffrey T. Varsalone, the Debtor's Chief Restructuring Officer and Rule 9001(5) to serve as the Plan Administrator. He will be authorized and directed to implement the Plan with full power and lawful authority to exercise and perform all of the rights, powers and duties held by the Debtor and the estate, including without limitation, those created by, or arising or existing under this Plan and Code Sections 1106, 1107 and 1108.

In discharging his duties as Plan Administrator, Mr. Varsalone will act in the name and on behalf of the Debtor, but will consult with the Oversight Committee and ultimately the Court. The Plan empowers the Plan Administrator, with the consent of the Committee, to assert Retained Causes of Action against Mr. Fuller or any other person or entity following Confirmation. The Plan Administrator has broad authority with respect to the liquidation of the remaining property of the estate, resolving claim issues and paying the dividends due Classes of creditors under other matters pertaining to the implementation of the Plan. Under the Plan, the Plan Administrator and professionals will be liable only for acts or omissions resulting from the Plan Administrator's own willful, knowing and material violation of law, or fraud. Further, the Debtor will be obligated to defend, indemnify and hold the Plan Administrator and professionals harmless from claims made against them for which they have no liability due to the exculpation provisions.

In order to ensure that creditors have insight into, input with respect to the administration of the Plan and balance, the confirmation of the Plan will result in the establishment of the Oversight Committee. The Debtor intends to nominate the following persons subject to approval by the Court in the Confirmation Order:

~~1. Peter C.L. Roth, who is a Senior Assistant Attorney General, or another attorney designated by the New Hampshire Attorney General. Attorney Roth is familiar with the Debtor, its business and affairs. The Office of the Attorney General and Mr. Roth participated actively and helpfully in the negotiations that led to the Rymes Asset Purchase Agreement. He has substantial knowledge of, and familiarity with the law regarding the nature and extent of the "consumer deposit claims priority." Although the Debtor and the State have slightly different views of the scope of the priority at this time, the Debtor expects Attorney Roth to advocate~~

~~strongly for the broadest reasonable interpretation of the priority to benefit and protect as many consumers as possible.~~

~~2.1. A person determined by the Debtor to hold an indisputable priority consumer deposit claim made in connection with a Pre-buy Contract for the 2014-15 heating season with respect to which the Debtor and Rymes did not make the deliveries required by the Contract. The Debtor expects ~~//~~ that Owen Walton, a certified public accountant ~~to~~ shares, and will express the interests of other priority consumer deposit creditors holding allowed claims. Counsel to the Debtor has known Mr. Walton for many years. Further, the interests of this creditor and the Priority Consumer Deposit Claim Class conflict with those of the senior Priority Employee Wage and Benefit Class, the General Unsecured Claim Class and the Subordinate Claim Class.~~

~~3.2. Candid Arcidy, whose company has asserted a priority consumer deposit claim to which the Debtor will object because her company is not an individual and a claim against an insurance carrier, or another person determined by the Debtor to hold a disputed Priority Consumer Deposit Claim. The Debtor expects Ms. Arcidy to share the concerns of potential, priority consumer deposit creditors that will be treated as General Unsecured Creditors if their claims should be disallowed and creditors that have or may be entitled to the benefit of insurance coverage. The Debtor nominated Ms. Arcidy because she demonstrated a willingness to discuss objectively the issues the law and reasons that the Debtor would object to the allowance of the claim as a priority claim. Further, the interests of this creditor conflict with those of the senior Priority Employee Wage and Benefit Class and the Priority Consumer Deposit Claim Class and the Subordinate Claim Class.~~

~~4.3. The Chairman of the Creditors Committee, George LeCours, because of his familiarity with this Case. Mr. LeCours is the Credit Manager of Sanel Auto Parts Co., which has asserted what will be classified as a General Unsecured Claim under the Plan. It is expected that the interests of Mr. LeCours and his company will be similar to those of other General Unsecured Creditors. The Debtor has no known basis on which to object to the allowance of the Sanel claim. Further, the interests of this creditor conflict with those of the~~

senior Priority Employee Wage and Benefit Class, the Priority Consumer Deposit Claim Class and the Subordinate Claim Class.

5.4. The United States Trustee and the New Hampshire Attorney General may appoint a non-voting representative as choose to be an ex officio, non-voting members of the Oversight Committee.

Notwithstanding the Debtor's nominations, the Court will appoint the members of the Oversight Committee in the Confirmation Order. The Plan Administrator must as a general rule consult with the Oversight Committee with respect to significant implementation issues other than those specifically permitted by the Plan at a minimum. Subject to Court approval and a cap of \$25,000, the Oversight Committee may retain counsel to provide advice and guidance with respect to Plan implementation issues.

With respect to the following issues (the "Required Committee Approval Matters"), the Plan Administrator shall not do or take any of the following acts or actions following Confirmation, without the approval of the Committee, acting by majority vote, or an Order of the Court in the event of a disagreement between the Plan Administrator and the Debtor Committee following the Effective Date: (1) initiate any Proceeding on account of a Retained Cause of Action (other than a claim objection) against any person or entity, (2) compromise and/or settle or refuse to compromise and settle any Retained Proceeding or Cause of Action having a value of more than \$5,000 or any compromise or settlement with Fred Fuller or any other insider irrespective of value, (2) file an objection to a claim in the Consumer Deposit Priority Class irrespective of the amount thereof or any other claim in excess of \$5,000 or settle an objection to a claim any claim for which Committee approval was necessary, (3) make any payments to Fred Fuller or any other insider or (34) any other act or action which requires Committee Approval under the Confirmation Order. If the Oversight Committee should reasonably determine that the Plan Administrator is not diligently, fairly and faithfully carrying out his duties, the Oversight Committee may request the Court to remove the Plan Administrator or seek other appropriate relief from the Court. , but is not required to, file a motion with the Court requesting the appointment of a Chapter 11 trustee.

With respect to any matter involving the implementation of the Plan other than a Required

Committee Approval Matters (“Ordinary Course Implementation Matters”), “consult” means meeting with the Oversight Committee at regular intervals set by the Committee from time to time. The Plan Administrator shall (1) summarize the developments that have occurred since the last meeting, (2) discuss the progress made in connection with implementation of the Plan and outline the acts and actions that the Debtor expects to take during the next 3 months and (3) discuss any concerns, issues or matters that they may have identified in writing at least 7 days before the meeting. The Debtor shall also give the Oversight Committee at least 5 days “negative notice” of any act to be done, action taken, document to be executed or pleading to be filed in connection with an Ordinary Course Implementation Matter (an “Ordinary Course Implementation Act”) (other than one previously disclosed or discussed at an Oversight Committee Meeting) and engage in good faith discussions with the Oversight Committee regarding any such Ordinary Course Implementation Act if the Committee asks for an opportunity to meet and confer before the end of the negative notice period. In the absence of a written request for a discussion received prior to the expiration of the negative notice period, the Oversight Committee shall be deemed to have consented to the Ordinary Course Implementation Act.

Although the Plan vests primary responsibility for the implementation of the Plan in the Plan Administrator, the Court will retain jurisdiction over certain implementation issues. It will retain jurisdiction over (1) the disallowance of claims in whole or in part, (2) the approval of fee applications filed by Professionals retained by the Debtor, Plan Administrator or Committee, (3) the retention of Professionals by the Plan Administrator (other than Debtor’s Counsel) or the Committee, including special counsel to represent the Debtor in connection with a Retained Proceeding or Retained Cause of Action and the terms thereof, (4) any proposed change in the terms on which a the Court previously approved the retention of a Professional, (5) the compromise or settlement of any matter involving a claim of more than \$5,000 and (6) disagreements between the Plan Administrator and the Committee involving a Required Committee Approval Matter. In addition, the Court will retain jurisdiction over any of the matters set forth in the part of the Plan captioned “Retention of Jurisdiction.”

VIII. Post-Confirmation Ownership, Management and Business.

Following Confirmation, the Debtor will be owned by Frederick Fuller subject to the terms of the Plan pending the dissolution of the Debtor and the cancellation of his equity interests or the issuance of new equity interests in the Debtor should the Debtor exercise its option to issue new equity interests. Mr. Fuller shall have no right to approve or ratify the actions and decisions of the Plan Administrator and the Oversight Committee pending the cancellation of his equity interests. ~~which will be administered by the Debtor in consultation with the Oversight Committee.~~ Frederick Fuller will not be paid any salary, given any benefits or provided with any other form of compensation without the approval of the Oversight Committee. To the extent that he consults with the Debtor or provides assistance that confers value on the Debtor and its estate at the written request of the Plan Administrator in consultation with the Oversight Committee, the Plan Administrator may reimburse him for out of pocket costs and expenses reasonable incurred by him in connection therewith.

The Plan Administrator, acting in consultation with the Oversight Committee, will be responsible for winding up the affairs of the Debtor pursuant to the Plan. The Plan Administrator may dissolve the Debtor when the Plan has been fully consummated. If the Plan Administrator elects to dissolve the Debtor, the Plan Administrator shall do so in accordance with applicable state law.

IX. Executory Contracts and Unexpired Leases.

The Plan Article captioned *Executory Contracts and Unexpired Leases* governs the assumption, assumption and assignment and rejection of executory contracts and unexpired real estate leases which are referred to collectively as “contracts.” The Plan permits the Debtor to assume, assume and assign or reject contracts at any time before the Effective Date by giving the non-debtor party thereto notice of the Debtor’s election to do so at which time it shall become an assumed or rejected contract or assumed or rejected lease, as appropriate. Under the Plan, the entry of the Confirmation Order automatically approves and authorizes the Debtor to implement its decisions regarding the assumption, assumption and assignment and/or rejection of executory contracts and unexpired leases as permitted by the Plan.

The Debtor will assume the Rymes Asset Purchase Agreement to the extent it constitutes an executory contract.

Except for those executory contracts and unexpired leases specifically assumed pursuant to the Plan, the Debtor will reject any other executory contract and unexpired lease on the Effective Date, whether known or unknown to the Debtor, including without limitation, the personal property lease with Maine Oxy. Each non-debtor party or a “counterparty” to a rejected contract shall have a general unsecured claim against the Debtor. The counterparty will have 30 days from the Effective Date to file a rejection claim with the Court; failing which such claim will be forfeited and barred forever.

XI. Proceedings and Causes of Action.

A. General. The Plan Article titled *Proceedings and Causes of Action* governs the settlement, termination and the retention and continued prosecution of pending proceedings and causes of action owned by the Debtor. The Article identifies for Plan Parties the Proceedings that will be terminated by the entry of the Confirmation Order and the Proceedings and Causes of Action that will be retained and prosecuted, compromised or settled by the Debtor to fund the Plan. In this Case, no Proceedings or Causes of Action will be compromised or settled by the confirmation of the Plan alone.

B. Proceedings to be Terminated to Conserve Cost. To limit cost and expense, the Proceedings pending in other courts identified in Exhibit D captioned “Terminated Proceedings” will be terminated automatically by the entry of the Confirmation Order and filing a copy of the Confirmation Order with each of such courts without prejudice to any timely Proof of Claim filed by a plaintiff in this Case. The Debtor may file an objection to a timely Proof of Claim within such period of time as may be set by the Confirmation Order. On request, each non-debtor party to a terminated Proceeding shall sign and deliver to the Debtor a stipulation for dismissal that conforms to the provisions of the preceding Paragraph.

C. Proceedings and Causes of Action to be Retained to Fund Plan. To fund and implement the Plan, the Debtor will retain the following Proceedings and Causes of Action, which are known as the “Retained Proceedings and Causes of Action” identified in this Section for the benefit of the Estate. The Retained Proceedings and Causes of Action include the following and any other Proceedings and Causes of Action identified in the Confirmation Order when entered by the Court:

1. All Proceedings pending before a court or administrative agency on the Petition Date in which the Debtor was the plaintiff or party seeking an award of damages or had filed a counterclaim, including without limitation:

a. The Proceeding against William Fuller pending in the Belknap Superior Court in which the Debtor seeks to recover \$100,000 lent to, or taken by William Fuller to finance the construction of a home located in Meredith, New Hampshire, plus interest at the statutory rate and attorneys' fees, costs and expenses on the grounds that William Fuller forced the Debtor to seek judicial assistance to secure a clearly establish right. According to counsel to William Fuller, the statute of limitations bars the prosecution of this Cause of Action. William Fuller's Counsel has advised the Debtor that William Fuller will vigorously defend any Causes of Action asserted against him by the Debtor and disputes each and every statement made by the Debtor with respect to him.

b. The Proceeding against FairPoint Communications, Inc., Northern New England Telecommunications Operations, Inc., d/b/a FairPoint Communications – NNE, Enhanced Communications of Northern New England, d/b/a FairPoint Long Distance – NNE, NEC Corporation of America, Spaulding Hill Networks, LLC, Computel, Inc. and SIGNET Electronic Systems, Inc. filed pending in the Hillsborough Superior Court before the Petition Date in which the Debtor seeks to recover more than \$5,000,000 worth of damages against the Defendants based on their breaches of contract, including express and implied warranties, and negligence. The UST advised the Debtor that the Fairpoint Action was dismissed without notice to the Debtor based on the Debtor's failure to retain new counsel after the Petition Date. The Debtor will re-instate based on the automatic stay that prevented the Court from acting without stay relief or re-file the Proceeding against the Defendants since the statute of limitations will not expire until January 1, 2017 at the earliest based on the allegation made in the Complaint and Jury Trial.

c. The collection Proceedings against the former customers of the Debtor identified in Exhibit E, "Retained Proceedings" in which the Debtor seeks compensatory damages in the amount shown in the Exhibit.

2. All Causes of Action which the Debtor holds or may hold against any

person or entity on the Effective Date, including without limitation, the following:

a. Any and all Causes of Action against Rymes and/or its affiliates, if any, arising from, out or incidental to a breach of, or default under the Asset Purchase Agreement, which are known as the “Rymes Causes of Action” and the “Rymes Proceeding,” including without limitation, those arising from, out of or incidental to Rymes failure to honor, indemnify, satisfy or pay to date (1) up to \$278,000 on account of the Harvard Pilgrim Employee Benefit Claim, (2) the Assumed Pre-buy/Budget Accounts and (3) up to \$42,500 in claims for employee severance and vacation benefits, plus interest and reasonable attorneys’ fees as determined by the trial court. The parties will meet and confer in an effort to resolve these issues short of litigation. In the event that any litigation on the foregoing issues is commenced, the Debtor will seek compensatory damages equal to the amount due, plus statutory interest and attorneys’ fees, costs and expenses. Further, in the event of litigation of any of the foregoing issues is commenced, to the extent one or more of these Causes of Action constitutes an unfair act or deceptive practice, the Debtor will seek multiple statutory damages and an award of attorneys’ fees.

Among other things, Rymes agreed to assume \$7,200,000 in claims held by customers specifically named on lists provided to Rymes as part of the purchase and sale negotiations. Matching the names on the Proofs of Claim to the names on the customer lists suggests strongly that Rymes will have to pay the Debtor at least another \$277,000. Alleged priority consumer deposit claims totaling approximately \$325,000 were filed by consumer creditors after the All Asset Sale because Rymes zeroed out all customer credits on the theory that they were not assumed liabilities under the Asset Purchase Agreement despite the fact that the most of the creditors were named in the customer lists provided to Rymes during the APA negotiations.

Under the Plan, the Debtor will file a declaratory judgment proceeding against Rymes to determine the nature and extent of its obligation to pay the \$7,200,000 in assumed customer liabilities, pay the \$42,500 in employee wage and benefit claims assumed under the Plan and the \$278,000 Harvard Pilgrim claim. The Rymes Causes of Action are for the most part straight forward. The amount due on account of the customer claims may, however, be

affected by the drop in wholesale price of fuel following the closing of the Rymes All Asset Sale because the contracts required the delivery of a certain number of gallons of oil although a Pre-buy Customer. The number of gallons required by a Pre-buy Contract or Budget Plan Contract may be more important than the dollar amount because the price of oil fell significantly after the date of the APA although customers with “Downside Protection” had to be billed at “retail market price” if it was lower than the “fixed price.” To resolve the issues, the Debtor will file a Complaint for Declaratory Judgment against Rymes if the parties cannot compromise and settle the dispute themselves subject to Court approval and appropriate claim objections with respect to any claim that does not qualify as a Consumer Deposit in the Debtor’s judgment.

b. All Causes of Action arising under Chapter 5 of the Code or the New Hampshire Uniform Fraudulent Transfer Act, including without limitation, those which the Debtor has or may have against the persons and entities named in Exhibits G and H captioned “Summary of Potential 90 Day Preference Claims” and “Summary of Potential Insider Fraudulent Transfer Claims,” respectively.

c. All Causes of Action against current and former directors, officers and employees of the Debtor, including without limitation, those arising from negligence, breaches of fiduciary duty, diversion, looting and/or misuse of money or property of the Debtor, deepening the insolvency of the Debtor, excessive compensation, fraud, negligence or other misconduct, or misuse of the Debtor, including without limitation, Frederick Fuller, Dawn Coppola, William Fuller, and other insiders with respect to the Debtor or Frederick Fuller.

d. All Causes of Action seeking to recharacterize or recast loans or other financial accommodations granted to the Debtor by Frederick Fuller, William Fuller and others as equity instead of debt.

e. Any and all other Causes of Action which the Debtor has or may have against any person or entity named or identified in the preceding Paragraphs which arise from, out of or incidental to the circumstances, events or facts that gave rise to the Proceeding or Cause or Causes of Action identified in the preceding Paragraphs of this

Section.

D. Right to Retain Additional Proceedings and Causes of Action. At any time before the 5th day preceding the beginning of the hearing on the confirmation of this Plan, the Debtor may elect to retain additional Proceedings and Causes of Action by filing a notice of the amendment of Exhibit I Retained Proceedings with the Court. The Debtor shall contemporaneously give each defendant or potential defendant notice of the Debtor's election to add a Proceeding or Cause of Action. Each Proceeding or Cause of Action designated by the Debtor in the notices shall automatically become and be a retained Proceeding or Cause of Action, as appropriate. Any Plan Party that voted to accept the Plan prior to that date may change the vote at the hearing.

E. Rights with Respect to Retained Proceeding and Causes of Action.

1. Subject to Oversight Committee approval following Confirmation in all cases, the Debtor may in the exercise of reasonable business judgment choose to prosecute, compromise and settle or release any Retained Proceedings or Cause of Action or Claim Objection. Among other things, the Debtor and the Oversight Committee will consider the net benefit to the estate of filing and prosecuting a Cause of Action or Claim Objection or compromising or settling any Retained Proceeding or Cause of Action or Claim Objection from time to time, including the estimated probability of success, the probable amount of any recovery as estimated by the Plan Administrator and the projected cost of the litigation as estimated by trial counsel.

2. The Plan permits the Debtor to retain counsel on a contingent fee basis with Court approval.

2.3. The Debtor expects to retain counsel to represent it in the Fairpoint Proceeding on a modified contingent fee basis that requires the Debtor to pay the costs and expenses reasonably incurred in the Proceeding, including the retention of experts in the fields of economics and telecommunications. The contingent fee will likely be (a) 30% of the amount recovered by settlement before the 30th day preceding the final pre-trial conference, 35% of any amount recovered by settlement after the 30th day before the final

pre-trial conference and the start of the trial and 40% of any amount recovered between the start of the trial and the conclusion of the Proceeding. Any other attorney selected by the Debtor must be approved by the Court. Except for retained proceedings or causes of action involving less than \$5,000, no Retained Proceeding or Cause of Action may be settled without prior Court approval.

3.4. From the proceeds of any recovery made on account of a Retained Proceeding or Cause of Action, whether by settlement, the collection of a judgment or otherwise, the Debtor will pay the attorney's fees, costs and expenses incurred in connection subject to Court approval. Any remaining proceeds shall be distributed to creditors holding allowed claims in accordance with the priority provisions of this Plan.

A. Additional Causes of Action Retained to Implement Plan. In furtherance of the Plan, the Debtor also retains the right to prosecute and/or compromise and settle the following types of Proceeding and Causes of Action

1. All objections to claims and adversary proceedings filed to dispute claims pursuant to this Plan and the Confirmation Order.
2. Any other application, contested matter or adversary Proceeding which falls within the post-confirmation jurisdiction retained by this Court.
3. All other matters over which the Court retains jurisdiction under the Plan Article captioned "Retained Jurisdiction."

XII. Claims Objections and Payment of Dividends Generally.

This Article establishes the procedures for resolving disputes pertaining to claims and the payment of dividends on allowed claims. The Class and Claims Summary attached as Exhibit A lists the claims known to the Debtor on a Class by Class basis. Undisputed claims will be allowed in the estimated allowed amount thereof, except for accounting disputes and disputes unknown to the Debtor on the Disclosure Date. In this regard, creditors should understand that the Debtor may object to any claims in Exhibit A.

The Debtor will pay the dividends becoming due under the Plan by mailing a check to the

allowed creditor. Dividend checks will be mailed to the addresses given by allowed creditors in (i) their proofs of claim or (ii) any written notice of change of address delivered to the Debtor. Since “undeliverable dividends” intended for a creditor holding an allowed claim will go back into the “Pot” for re-distribution to other allowed claims, all creditors should make sure that they notify the Court and the Debtor of any change of address.

XI. Generally Applicable Implementation Provisions.

This Article establishes the Debtor’s authority to implement the Plan, which will become a contract between the Debtor and each holder of an allowed claim or interest. It obligates the Debtor and each Plan Party to implement the Plan – pay, perform and satisfy their financial liabilities and other obligations to each other under the Plan and execute any Plan documents that satisfy the requirements of the parts of the Plan and Disclosure Statement captioned *Plan Documents*. Confirmation may impose on Plan Parties the implied contractual duties of good faith and fair dealing arising under state law. The Debtor and the Plan Parties must do, execute or cause to be done and executed all further acts and documents as may be reasonably necessary to implement the Plan in the form included in the Appendix or a form mutually acceptable to the Debtor and the Plan Party or Parties to the document which conforms to the specific requirements of the Plan and is otherwise in a form generally accepted by parties to a similar transaction. In addition, the entry of the Confirmation Order will authorize the Debtor to do or take, or cause to be done or taken, close or cause to be closed and execute or cause to be executed any other act, action, document or transaction, which the Debtor reasonably believes to be necessary for the successful implementation of the Plan or incidental thereto.

XII. General Provisions Pertaining to Treatment of Secured and Unsecured Claims.

In an effort to avoid repetition and accidental inconsistencies, the Plan article titled *Generally Applicable Treatment Provisions* contains provisions that relate to more than one Class. There are no secured claims in this Case. Rymes assumed the secured claims held by Sprague Energy under the Asset Purchase Agreement after Sprague reduced the secured claims by approximately \$1,000,000. Not only did the assumption result in the payment of the only secured claims in this Case, but it saved other creditors holding allowed claims from significant dilution – a reduction in the amount of their dividends resulting from increasing the allowed

amount of General Unsecured Claims by \$1,000,000.

In this part, the Debtor summarizes the most important of the provisions applicable to more than one Class of unsecured creditors. A Class may be exempted from a generally applicable treatment provision in the part of the Plan that addresses specifically the treatment of claims in the Class. Under the Plan, an exemption is the exception, not the rule.

The Plan section captioned *Provisions Generally Applicable to All Classes* sets basic rules applicable to unsecured creditors. The Debtor reserves in the Plan the right to object to a claim or claims not marked disputed in Exhibit A if in any case: (1) the Debtor did not have actual knowledge of the circumstances, conditions, events or facts which gave rise to a dispute on or before the Disclosure Date or (2) the creditor holding the claim rejects the offer to allow the claim in the Estimated Allowed Amount by filing a specific objection to the allowance of the claim in the amount proposed by the Debtor. Finally, this part of the Plan allows creditors in any Class to accept less favorable treatment than proposed in the Plan and preserves their offset and recoupment rights under the Code.

Part Five

The Debtor and Relevant Business and Case History

This Part does not have a Plan counterpart. It provides Plan Parties with pre-petition information regarding the ownership and management of the Debtor and the primary reason or reasons that the Debtor sought protection under the Code and a summary of the significant events that occurred during the Case.

XIII. History of Debtor, Including Primary Cause or Causes of Bankruptcy.

On the Petition Date, the Debtor was the largest retail oil and propane distributor in New Hampshire and northern Massachusetts. Frederick Fuller built the Debtor by buying smaller distributors. The retail heating oil and propane business has always been capital intensive and cyclical. The Debtor always had to purchase millions of inventory during late November, December, January, February and March, the period known as the “heating season.” The Debtor purchased up to \$100,000 per day during the November, 2014. On average, it took the Debtor approximately 60 days to collect its accounts receivable. As a result, the Debtor knew that it

would experience significant negative cash flow during December, January and February 2014 and 2015 just as it had in the past.

During early 2014, the Debtor had a significant amount of cash derived from "Pre-buy Contracts," and "Budget Accounts," and Credit Accounts. A "Pre-buy Account" is an agreement under which customers bought, and paid for oil or propane based on an assumed price and the Debtor agreed to deliver the oil or propane at that price. A customer might or might not have a credit or credits at the end of a heating season based on the use of less fuel than projected or the fixed price being greater than the market price during the term of the Pre-buy Contract. Some creditors paid some of the money due under a "Pre-buy Accounts" with credits. As of the Petition Date, the Debtor owed customers at least \$7,200,000.

The Debtor also entered into Budget Accounts or Contracts with customers. A Budget Account is an account that requires the customer to make pre-determined monthly payments against an estimated fuel cost. In certain cases, customers made monthly payments through November 2014 and then stopped, allegedly at the instruction of the Debtor's employees although that has not been confirmed at this time.

Finally, the Debtor had Credit Accounts with customers that were treated as "Budget Accounts." The Credit/Budget Accounts were divided into what the Debtor and its Chief Restructuring Officer called "Active Credit Accounts," ~~-- which included the customers of the Debtor who continued to buy~~ bought oil and propane from the Debtor on a regular basis using credits in their accounts and making additional payments when necessary, but without a Pre-buy Contract or Budget Account. ~~Other Inactive Credit/Budget Accounts consisted of those customers with a credit balance belong to customers who had stopped doing business with the Debtor, but did not request a refund of their credit balances, no longer in business with the Debtor and would not morph into Rymes customers. During the negotiations with Rymes regarding the purchase and sale of the Debtor's operating assets, this group of Credit/Budget Accounts became known as the "Old and Cold Credit Accounts".~~

~~As of the Petition Date, the Debtor owed customers at least \$7,200,000. The "amounts due customers" calculation made by the Debtor assumed a per-gallon cost of approximately \$3.49 per gallon of oil as was the case on the Petition Date. The wholesale market price dropped~~

~~significantly following the Rymes Sale. It is uncertain at this point how the drop in the wholesale price affects the calculation of the amounts due customers if at all. Under the Rymes Asset Purchase Agreement, Rymes assumed the Debtor's liabilities under "Pre-Buy/Budget Contracts," estimated by the Debtor to be \$7,200,000.00 during the Asset Purchase Agreement negotiations.~~

During the months preceding the Petition Date, the Debtor faced several, critical issues. It did not enough capital or a line of credit sufficient to pay its operating costs and expenses, including inventory purchases, going into the heating season. The Debtor had used a substantial portion of the money held in one form or another for customers. The Debtor had for many years been unable to find an institutional lender willing to make a working capital loan to the Debtor despite an effort made by Frederick Fuller. Insiders provided working capital when no reasonable commercial lender would have done so in the Debtor's opinion. Without credit, the Debtor had little hope of continuing its business because Sprague and its suppliers had put the Debtor on COD payment terms.

Second, Sprague had filed the Sprague Proceeding, which is known as a replevin proceeding against the Debtor in the Rockingham Superior Court. Sprague claimed to be owed approximately \$4.7 million dollars and sought permission to take possession of the Debtor's delivery vehicles and its other personal property. The Debtor had to enter into a "Final Stipulation" with Sprague during October, 2014 which required the Debtor to deliver its property to Sprague on November 19, 2014 in the hope of finding a buyer for its stock or assets. Although Frederick Fuller made a significant effort to sell the Debtor's business and assets to suppliers and competitors, he could not find a buyer willing to sign an agreement for the purchase and sale of the assets.

In addition, the Debtor knew that the trial of the Wilkins-Mulcahey Proceeding funded and to be tried by the Equal Employment Opportunity Commission would start on or about what turned out to be the Petition Date. Ms. Wilkins, a Plaintiff Intervener, claims to have suffered damages in excess of \$2,743,268. Ms. Mulcahey also claims to have sustained damages in the amount of \$1,017,995.80. Both claims arise from alleged discrimination/harassment. Ms. Mulcahey also asserted a retaliation claim. Following the Petition Date, Ms. Wilkins and Ms.

Mulcahey re-opened their case against Frederick Fuller for the purposes of recovering damages against him.

In the Wilkins Proceeding, the Wilkins requested permission to make a \$2,500,000 attachment in of Frederick Fuller property. The Debtor attended the hearing for the purpose of making certain that the District Court understood that the Proceeding could not proceed against the Debtor. In addition, the Debtor reserved its right to seek an injunction preventing Ms. Wilkins and Ms. Mulcahey from going forward unless the Plaintiff Interveners agreed that a judgment against Mr. Fuller would not bind the estate.

During the hearing, the District Court heard offers of proof testimony made by Wilkins' Counsel regarding her damages. The District Court authorized Ms. Wilkins to make a \$300,000 attachment of real and personal property standing in the name of Frederick Fuller based on the statements made during an attachment hearing. The Debtor will file an objection to the Proof of Claim filed by Ms. Wilkins. The objection filed by counsel to Ms. Mulcahey suggests that she has not sought an attachment of Mr. Fuller's property. If Ms. Wilkins and Ms. Mulcahey agree to reduce their claims to an amount that will not have a material, adverse effect on the amount of dividends to be paid to General Unsecured Creditors, the Debtor with the approval of the Oversight Committee will stipulate to the allowance of the claims.

During 2013, the Debtor had filed suit against William Fuller in the Belknap Superior Court to recover \$100,000 lent to, or taken by William Fuller to finance the construction of his home. It does not seem that William Fuller has any defense to the Cause of Action asserted by the Debtor to recover the \$100,000 although his counsel claimed initially s-that the Belknap Superior Court dismissed the action based on the statute of limitations and that the offsets resulting from his claim against the estate deprive the claim of any value. Research revealed that the Court dismissed the case without notice to the Debtor based on the Debtor's failure to prosecute the Case. The Debtor will re-instate or re-file the Proceeding against Mr. Fuller. As a result, the Debtor will file a Motion for Summary Judgment against Mr. Fuller.

After the Debtor filed suit against William Fuller, he ~~began championing privately Ms. Wilkins and Mulcahey.~~ He became a "Charging Party" before the Equal Employment Opportunity Commission in his own case. ~~Counsel to Ms. Wilkins and Ms. Mulcahey claim that~~

~~Mr. Fuller was not championing her clients.~~ He may have been protecting ~~to~~ himself, but no question exists in the Debtor's mind that he lent support to Ms. Wilkins' and Ms. Mulcahey' s claims for his and/or their purposes ~~in the Debtor's opinion~~. In addition to filing a Proof of Claim against the Debtor in the amount of \$2,500 000 based on the allegation that the Debtor fired him in retaliation, he filed an action against the Debtor in the District Court seeking compensatory damages based on an alleged retaliatory termination resulting in lost income.

The Debtor and William Fuller agreed to stay the District Court action. Trying the case will be expensive because a substantial amount of fact discovery will be needed to test Mr. Fuller's alleged altruism and his lost income claims. Expert testimony will also be necessary. The Debtor will also assert Chapter 5 Causes of Action and other Causes of Action against William Fuller. As part of the Plan implementation process, the Debtor will ask the Court to estimate the amount of this claim for the purposes of voting and distribution.

During late 2012, the Debtor decided to replace its telecommunications system through which it communicated with customers. It purchased a sophisticated system from NEC America at the recommendation of FairPoint. The Debtor retained the other defendants to participate in the design and installation of the system. Almost immediately, the Debtor experienced a catastrophic failure that disrupted the Debtor's relationship with customers, prevented the Debtor from managing deliveries and precipitated an investigation by the New Hampshire Department of Justice, which ignited a media storm of adverse publicity.

Instead of immediately replacing the system as demanded by the Debtor, NEC and the other Defendants tried to fix the system. It took months during which the Debtor incurred unnecessary costs and expenses, suffered bad publicity and lost money. At the end of the day, it appears none of the Defendants, which held themselves out as telecommunications experts, bothered to install surge protection.

XVII. Significant Events During Case.

A. Cash Collateral and Appointment of Chief Restructuring Officer.

Immediately after filing the Petition, the Debtor needed permission to use its inventory, accounts receivable and cash often known as "cash collateral" to continue its business

operations. Sprague objected strenuously. The Debtor agreed to retain the Chief Restructuring Officer to ensure transparency and instill some degree of confidence in Sprague and the other creditors. After an unusual and lengthy, evidentiary hearing, the Court allowed the Debtor to use cash collateral for a very brief period of time, but made it clear that the Debtor needed to find a buyer for its property on a very expedited basis.

B. The Rymes Transactions.

Following the conclusion of the evidentiary cash collateral hearing, the Debtor and Chief Restructuring Officer met with Rymes to negotiate an agreement for the purchase and sale of all, or substantially all of the Debtor's operating assets. The first meeting lasted from the end of the cash collateral hearing until 5:00 the following morning. It produced a Term Sheet – a document that lays out the essential points of a transaction. Over the next several days, the Debtor and Rymes drafted the Asset Purchase Agreement.

On November 18, 2014, less than ten (10) days into this Case, the Debtor filed its Motion for Order Expediting Sale Process to shorten the standard twenty-one (21) day period and establish the schedule for an expedited sale process. The Court scheduled the hearing on the proposed Rymes Sale for November 24, 2014. On November 21, 2014, the Debtor filed its Motion for Order Authorizing Private Sale of All or Substantially All of the Estate Property to Rymes. The Internal Revenue Service, Raymond Green Funding, LLC and others objected to the sale for a variety of reasons. After diligent and good faith negotiations, however, the Debtor and the objecting parties resolved to the objections.

On November 25, 2014, the Debtor and Rymes entered into the Rymes Asset Purchase Agreement. On the first (1st) day of the hearing on the sale motion, issues regarding the nature, extent and scope of liens on property of Frederick Fuller held by the Internal Revenue Service derailed the hearing. The United States Attorney, New Hampshire Attorney General, Rymes and the Debtor conferred for hours. They reached and documented a shared understanding that the Internal Revenue Liens did not prevent the closing of the transaction. On November 26, 2014, the Court authorized the Rymes Asset Sale.

On December 1, 2014, Rymes and the Debtor closed the Rymes Asset Sale pursuant to

the Rymes APA. The Debtor kept its cash on hand, approximately \$526,626.25. Rymes paid the Debtor \$275,000 by executing and delivering to the Debtor or a promissory note in that amount, without interest, which has been paid subject to a small accounts receivable adjustment required by the fact that, on the closing date, the Debtor's accounts receivable was approximately \$23,000 less than \$1,800,000. Rymes also discharged the \$4,750,000 Sprague claim by paying Sprague \$3,645,000 freeing the Debtor and the estate from a potential, unsecured claim of approximately \$1 million. Sprague also released Frederick Fuller as part of the settlement eliminating Sprague as a competitor with respect to claims against Frederick Fuller. In addition, Rymes (i) assumed and agreed to pay by delivering oil or propane approximately \$7,200,000 in Pre-Buy/Budget Contracts, which included the customers named in lists provided to Rymes during the Asset Purchase Agreement negotiations, (ii) assumed the "Seller's liabilities to its employees for unused vacation and sick pay estimated to be \$42,000" and (iii) and agreed to indemnify the estate up to \$278,000 on Harvard Pilgrim's claim if it is allowed as a priority claim.

Following the Rymes Asset Sale, there were disputes by and between Rymes and the Debtor regarding certain assets and whether those assets were sold as part of the Rymes Transaction. As part of a negotiated resolution of those issues, Rymes purchased the Debtor's Patriots Season Ticket License, including right to buy season tickets in the future for approximately \$10,000 with Court approval. Rymes also dropped its demand that the Debtor reimburse the State of New Hampshire for fuel assistance payments paid to the Debtor for oil that was never delivered. Subsequently, the Debtor sold to Rymes its 50% interest in the Debtor's accounts receivable that were over 89 days old on the Petition Date for approximately \$141,500 with Court approval.

C. The Frederick Fuller Motor Vehicle Sale. After the Rymes Asset Sale closed, Frederick Fuller offered to buy four (4), "personally owned" motor vehicles from the estate, including what Fuller thought was a so-called Camper Van. Rymes believed that it owned the motor vehicles, but agreed to join with the Debtor in selling them to Frederick Fuller for \$31,100, a fair price based on publications reviewed by the Chief Restructuring Officer. The Debtor and Rymes agreed to divide the purchase price equally to resolve their dispute regarding ownership. The Court approved the transaction, but a dispute broke out regarding a particular vehicle and whether that vehicle – a Camper Van -- was included in the

Sale. By agreement, Fred Fuller and Rymes resolved these issues, said agreement being approved by the court on or about July 14, 2015.

Part Six

Significant Property and Value, Plan Use and Hypothetical Liquidation

This Part has no counterpart in the Plan. It describes and values the Debtor's significant property on a reorganization and liquidation basis based on the proposed use of the property under the Plan and the assumptions made by the Debtor. It also provides Plan Parties with the projected distributions from a liquidation of the significant property. This part also discusses the feasibility of, and risks inherent in the Plan. Finally, this part explains why the Debtor believes that the Plan satisfies the best interests of creditors test.

XVIII. Significant Property, Plan Use and Value.

A. Scope and Liquidation Analysis and Summary. This Article describes for Plan Parties the significant property of the estate, the proposed use of the property under Plan and the projected reorganization and liquidation values of the property. The Debtor did not include property having a value of less than \$5,000, except in those instances in which the failure to identify cash and other types of property seemed likely to raise questions. Property worth less than \$5,000 seemed to be inconsequential in terms of value and immaterial to an evaluation of the merits of the Plan.

B. Reorganization Valuation Assumptions. In this rather unusual bankruptcy proceeding, the Debtor's tangible, personal property has already been reduced to cash. The cash has the same value in a liquidating reorganization that it does in a liquidation. On the other hand, it is almost impossible to value the Proceedings and Causes of Action to be retained by the Debtor given the fact that litigation is inherently uncertain. Under the Plan, creditors holding allowed claims will be represented by the Oversight Committee giving them a voice in the decisions which will have to be made regarding the resolution of the retained Proceedings and Causes of Action based on their cost-benefit analysis as opposed to giving up control to a Chapter 7 trustee.

C. Real Property, Plan Use and Values. The Debtor has no real property or interests in real property other than real subsequently recovered from Frederick Fuller or another insider or other person in an avoidance action.

D. Cash and Plan Use.

The Debtor had approximately \$369,678 in cash on hand as of June 29, 2015. The Debtor will recover another \$138,000 net from the sale of the Debtor's Patriots Season Ticket License, the sale of motor vehicles and fifty percent (50%) interest in the Debtor's Over-89 Day Accounts Receivable (other than certain insider receivables).

E. Net Operating Losses. At the moment, the Debtor is taxed under the provisions of Subchapter S of the Internal Revenue Code and Treasury Regulations. It files and information will return in which its profits and losses are "passed through" to the equity holder, Frederick Fuller. The net operating losses are substantial, but unusable unless the Debtor revokes the so-called S-election within 45 days of the last day of its fiscal year – believed to be December 31, 2015. If the Debtor, acting through the Plan Administrator should revoke the S-election based on an opinion letter from a qualified, certified public accountant that the estate will not incur any tax liability for preceding years, then it may be able to negotiate a merger with another fuel distribution company. Although it may be difficult to find a profitable fuel distribution company with which to merge, a merger would give creditors holding allowed claims value for the net operating losses.

F. Retained Proceedings and Causes of Action. Based on the information available to the Debtor and its Chief Restructuring Officer on the Disclosure Date, the Debtor believes that the property of the estate includes the Proceedings and Causes of Action described in the part hereof titled "Proceedings and Causes of Action" and the part of the Plan bearing the same title. The Debtor will not value the retained Proceedings and Causes of Action in this Disclosure Statement. It is a public document available to the potential Defendants. Disclosing the Debtor's evaluation of the Proceedings or Causes of Action will be detrimental to the Debtor. If the Court enters an order approving the proposed Confidentiality Agreement with the Debtor, the Debtor will share its opinion of the values of the retained Proceedings and Causes of Action.

G. No Other Personal Property. Based on the best information available to the

Debtor on the Disclosure Date, the Debtor has no other personal property, except for the Proceedings and Causes of Action disclosed in the part hereof captioned "Proceedings and Causes of Action."

H. Hypothetical Liquidation Analysis.

Putting aside the value of participating in the post-confirmation matters that will affect the amount of their recoveries, which the Plan gives them, but a liquidation would not, a liquidation will produce a very different, less favorable result for creditors holding allowed claims than the Plan. The conversion of this reorganization Case to a Chapter 7 liquidation case will inevitably result in the appointment of a Chapter 7 trustee. A Chapter 7 trustee will charge creditors the statutory fee on all monies disbursed or turned over to parties in interest in the Chapter 7 case, whether the Trustee collected the money or not. The fee is: 25% of the first \$5,000, 10% of the next \$45,000, 5% from \$50,001 to \$1,000,000 and 3% of the balance without credit for the work already done by the Chapter 11 professionals and payments made, or administrative liabilities incurred for that work. A Chapter 7 trustee will also retain himself or his law firm to act as counsel to the Trustee and an accountant at an estimated cost of 10% of the monies disbursed or turned over to creditors and other parties in interest. In this Case, the Debtor estimates the Trustee's and Trustee's professional fees would be approximately \$325,000.00.

Further, a Chapter 7 trustee will not likely explore actively and seriously the possibility of merger with another entity to monetize the Debtor's net operating losses. It is a transaction that has not often been done in a bankruptcy case. The Debtor's Counsel has, however, engaged in similar transactions twice when supported by knowledgeable and sophisticated certified public accountants. Given the potential value, however, the transaction has the potential to add several hundreds of thousands of dollars to the estate.

Similarly, the retained Proceedings and Causes of Action should produce more money in the hands of the Debtor than a Chapter 7 trustee. The Debtor's Chief Restructuring Officer has already done the analysis necessary for the Chapter 5 Actions. Letters demanding the payment of apparent preferences have been prepared and will be sent next week. Letters demanding the payment of the value of transfers to be avoidable will be sent the following week. As a result, the Debtor has begun the liquidation of the Chapter 5 Actions.

Some of the retained Causes of Action will be more unusual. The deepening insolvency claims, recasting of debt to equity and subordination claims are unusual. They require a combination of business and legal analysis. In this case, much of the work has already been done by the Debtor. Even if a Chapter 7 trustee had previously prosecuted or defended similar claims as some have, duplicating the cost and expense seems imprudent.

Under the circumstances, the Debtor believes creditors will fare better under the Plan than in a liquidation.

Part Seven
**Confirmation Generally, Feasibility,
Best Interests Of Creditors and Cram Down**

XIX. Confirmation Generally.

At the Confirmation Hearing, the Court will confirm the Plan only if all of the requirements of section 1129 of the Code are met. The requirements for confirmation of the Plan are that:

1. The Plan is feasible,
2. The Plan is accepted by all impaired Classes of claims and equity interests, and
3. To the extent that any holder of a claim or interest in an impaired Class does not vote for the Plan, it will receive or retain under the Plan property of a value that is not less than the amount that would have been received or retained if the Debtor were liquidated under Chapter 7 of the Code.

Even if an impaired voting Class rejects the Plan, the Court may confirm the Plan by "cramming it down" if the Plan satisfies all of the requirements of Code Section 1129(a), except (a)(8), and "does not discriminate unfairly" and is "fair and equitable" as to such Class:

XX. Risk and Feasibility.

A. Risk Factors and Analysis. With respect to Class 1 through 4, the Debtor does not believe that there is any substantial risk because the Debtor has enough cash on hand to pay the dividends promised by the Plan. Class 5 creditors are largely dependent on success in settling or reducing to judgment the Retained Proceedings and Causes of Action. Although the Debtor believes that it will be successful, the cost to litigate some of the Retained Proceedings and Causes of Action will be substantial.

B. Plan Is Feasible. The Debtor expects the Plan to be substantially consummated with respect to the Class 1 through 4 creditors on the Effective Date establishing that it is feasible.

XXI. BEST INTERESTS OF CREDITORS, ACCEPTANCE AND CONFIRMATION

A. Plan Is in the Best Interests of Creditors.

Confirmation of the Plan is in the best interests of creditors within the meaning of the Code. Determining whether or not the Plan satisfies the “best interests test” requires a comparison of the dividends are expected to receive under the Plan to the distributions that impaired creditors would receive in the hypothetical liquidation described earlier in this Disclosure Statement. Exhibit A shows that creditors holding allowed claims will recover more under the Plan than they would in a Chapter 7 liquidation.

B. Acceptance of Plan.

Pursuant to Section 1126(e) of the Code, a Class of impaired claims has accepted a plan of reorganization when such plan has been accepted by creditors (other than an entity designated under Section 1126(e) of the Code) that hold at least two-thirds in aggregate dollar amount of allowed claims in such Class and more than one-half in number of the allowed claims of such Class held by creditors (other than any entity designated under Section 1126(e) of the Code) that have actually voted to accept or reject the plan. Section 1126(e) of the Code allows the Court to designate the votes of any party that did not vote in good faith or whose vote was not solicited or procured in good faith or in accordance with the Code. Holders of claims who fail to vote are generally not counted as either accepting or rejecting the plan.

C. Cramdown and Absolute Priority.

Section 1129(b) of the Code permits a court to confirm a plan even if an impaired voting Class rejects the plan or a creditor objects to its confirmation through a procedure commonly known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of claims or equity holders that is impaired under, and has not accepted, the plan. The Debtor will seek nonconsensual confirmation of the Plan with respect to each Class of claims that is entitled to vote to accept or reject the Plan if such Class rejects the Plan. The Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan or any Plan Exhibit or schedule, including amending or modifying it to satisfy the requirements of section 1129(b) of the Code, if necessary. Given the treatment of all Classes of claims and interests under the Plan, the Debtor believes that the Plan satisfies "cramdown" requirements for the nonconsensual confirmation of the Plan.

**Part Eight
Additional Disclosures**

XXII. Tax Returns and Tax Consequences to Creditors.

A. Status of Federal and State Tax Returns. The Debtor has filed all of the federal and state tax returns due on or before the Disclosure Date.

B. Tax Consequences to Creditors. The confirmation and implementation of the Plan may result in federal income and/or state tax consequences to creditors. The tax consequences may and more probably than not will vary among the creditors because of their unique business and tax considerations and the claim itself. Consequently, creditors are urged to consult with their tax advisors in order to determine the tax implications of the Plan under federal and state law.

XXIII. Acquisition of Claims by Insiders. No claims have been acquired by any insider since the Petition Date.

XXIV. Proofs of Claim.

A. Claims Listed as Contingent, Disputed or Unliquidated. In Schedules D, E

and F to the Petition and Appendix Exhibit A, the Debtor described some of the claims asserted by creditors as being contingent, disputed or unliquidated. The Notice of First Meeting of Creditors warned each creditor holding a disputed claim that the creditor had to file a Proof of Claim on or before the Bar Date, which has now passed. As a result, the Debtor will object to any disputed claim listed in the Petition with respect to which the creditor did not file a Proof of Claim.

B. Administrative Claims. All professionals holding administrative claims against the Debtor must file a written notice of estimated administrative claim with the Debtor's Counsel at least 5 days before the Confirmation Hearing, which shall be accompanied by a detailed statement describing the services, rendered to the bankruptcy Estate. Within 30 days after the Confirmation Date, final applications for compensation must be filed pursuant to Section 330 unless the Court enters an order extending such date.

C. Rejection Claims. Any creditor holding a rejection claim, as defined in the Glossary, must file a Proof of Claim within the period of time specified in the Plan.

XXV. Qualifications and Limitations

A. Primary Source of Information. The information contained in this Disclosure Statement came from the Debtor's management and its books of account and other business and financial records.

B. Dating of Information and Statements. All of the statements contained in this Disclosure Statement are being made as of the Disclosure Date unless otherwise stated in the body of this Disclosure Statement.

C. Limited Use of Disclosure Statement. Only Plan Parties are intended to receive and use the information contained in this Disclosure Statement. It has been prepared by the Debtor to provide Plan Parties with adequate information to permit them to make an informed decision about the merits of the Plan. Although the Court determined that this Disclosure Statement provides adequate information, its Order approving the Disclosure Statement does not mean and should not be interpreted to mean that the Court has endorsed or determined that the Plan will or will not be successful or that creditors should vote for it.

D. No Approval of Securities Regulators. No benefits offered to Plan Parties under the Plan have been approved or disapproved by the SEC, NASD or any other governmental authority. Neither the SEC, NASD nor any other governmental authority has passed, or will pass upon the merits of the Plan except for the Court.

E. No Other Representations. No representations concerning the Debtor, particularly regarding future business operations or the value of the Debtor's assets, have been authorized by the Debtor, except as set forth in this statement.

F. Projections. Much of the information contained herein consists of projections of future performance of a very complicated and uncertain business. The Debtor has made a reasonable effort to insure that the assumptions, estimates, financial projections and predictions have a reasonable basis in fact. The Plan term is 10 years. During that period, factors beyond the control of the Debtor and its management will affect the implementation and success of the Plan. Under no circumstances should any Plan Party view the information as a guaranty, representation or warranty.